

PETITION UNDER 28 USC § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court		District MASSACHUSETTS
Name JAMES W. BARTON	Prisoner No. W 80583	Case No. 1453/2001-2004
Place of Confinement NCCI P.O. BOX 466; P.GARDNER, MA 01440		
Name of Petitioner (include name under which convicted) JAMES W. BARTON		Name of Respondent (authorized person having custody of petitioner) V. COMMISSIONER OF CORRECTION; SUPT. NCCI @ GARDNER, MA
The Attorney General of the State of: MASS.		
PETITION		
1. Name and location of court which entered the judgment of conviction under attack _____ SUPERIOR COURT - MIDDLESEX (COURT LOST JURISDICTION G.L.Ch.263 §9)		
2. Date of judgment of conviction _____ JULY 26, 2002		
3. Length of sentence _____ 3-to-5 YRS; 3-to-5 YRS CONCURRENT (3 times)		
4. Nature of offense involved (all counts) _____ B & E BUILDING, Poss of burglarious Tool, Destruction of property and Larceny of bldg.		
5. What was your plea? (Check one) (a) Not guilty <input type="checkbox"/> (b) Guilty <input checked="" type="checkbox"/> (c) Nolo contendere <input type="checkbox"/>		
If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details: TRIAL COURT EXECUTED A DEFUNCT TRUE BILLS 302 DAYS AFTER ARREST; DENIAL OF PROMPT AND SPEEDY TRIAL WITHIN (6) months.		
6. If you pleaded not guilty, what kind of trial did you have? (Check one) (a) Jury <input type="checkbox"/> (b) Judge only <input type="checkbox"/> NOT APPLICABLE		
7. Did you testify at the trial? Yes <input type="checkbox"/> No <input type="checkbox"/> " "		
8. Did you appeal from the judgment of conviction? Yes <input type="checkbox"/> No <input type="checkbox"/>		

9. If you did appeal, answer the following:

(a) Name of court _____

Not Applicable

(b) Result _____

(c) Date of result and citation, if known _____

(d) Grounds raised _____

(e) If you sought further review of the decision on appeal by a higher state court, please answer the following:

(1) Name of court _____

CC

CC

(2) Result _____

CC

CC

(3) Date of result and citation, if known _____

CC

CC

(4) Grounds raised _____

CC

CC

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

(1) Name of court _____

CC

CC

(2) Result _____

CC

CC

(3) Date of result and citation, if known _____

CC

CC

(4) Grounds raised _____

CC

CC

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes No

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court *(Middlesex) Revised & Revoked Rule 291 PMR Crim P.*

(2) Nature of proceeding *reduction of sentence*

(3) Grounds raised *Return of Cancer, Both eyes still bad and am still asking for treatment, due to alcoholism and drugs.*

(4) Did you receive an evidentiary hearing on your petition, application or motion?
 Yes No

(5) Result _____

Not Applicable

(6) Date of result _____

(b) As to any second petition, application or motion give the same information:

(1) Name of court _____

Not Applicable

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?
 Yes No

(5) Result _____

14 *11*

(6) Date of result _____

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes No
 (2) Second petition, etc. Yes No

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

*Exhausted State
Remedies in the SJC.*

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting same.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, you should raise in this petition all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: **PETITIONER WAS NOT LAWFULLY ARRESTED BY LAWS GOVERNING**

LAWFUL ARREST PROCEDURES. MGL, CH. 218 §35; CH. 263 §4, §44.

Supporting FACTS (state *briefly* without citing cases or law) _____

COURT DID NOT HAVE CRIMINAL JURISDICTION OVER PETITIONER;

**TRIAL COURT DID NOT EXECUTE TRUE BILLS OF INDICTMENTS MEETING
THE AUTHENTICATION REQUISITES BY LAWS, FEDERAL & STATE.**

TITLE 28 USCS §1738; MGL CH. 212 §26.

B. Ground two: **THE PRE-TRIAL DELAYS OF 302 DAYS VIOLATED THE 180 DAYS**

LIMITATIONS GUARANTEED BY THE 6TH AMEND. U.S. CONST. LAW.

Supporting FACTS (state *briefly* without citing cases or law): _____

-302- 180

C. Ground three: TRIAL JUDGE WAS JUDICIALLY BIAS AND ACTED INCONTEMPT OF THE LAWSupporting FACTS (state *briefly* without citing cases or law):

D. Ground four: PRISON OFFICIALS NEVER RECEIVED LEGAL"COMMANDS" FROM A JUDGE OF THE TRIAL COURT TO COMMIT AND HOLD ME.Supporting FACTS (state *briefly* without citing cases or law):

THE TRIAL JUDGE NEVER PERSONALLY SIGNED AN ORDER/WARRANT WHICH
THE PRISON COULD ARREST AND DETAIN ME.

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: _____

NOT APPLICABLE

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?
Yes No

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing ATTORNEY JOHN OSLER 180 CAMBRIDGE ST.
CAMBRIDGE, MASS. 02141

(b) At arraignment and plea _____

CIVIL COVER SHEET

03-40271

JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

1) PLAINTIFFS

PETITIONER

JAMES W. BARTON

DEFENDANTS

RESPONDENT

COUNSEL'S OFFICE

COMMISSIONER, MASS. DEPT. OF CORR.
SUPT. NCCI GARDNER MA 01440

11/28/03

AM 09

2) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

3) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

ATTORNEYS (IF KNOWN)

JAMES W. BARTON
NCCI P.O. BOX 466
GARDNER, MA 01440

3) BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

U.S. Government Plaintiff

 3 Federal Question (U.S. Government Not a Party)

U.S. Government Defendant

 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

PTF DEF

PTF DEF

Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

4) ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

(PLACE AN "X" IN ONE BOX ONLY)

Original Proceeding

 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened

Transferred from another district (specify)

 5 Multidistrict Litigation

Appeal to District Judge from Magistrate Judgment

5) NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
0 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
0 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 423 Withdrawal 28 USC 167	<input type="checkbox"/> 410 Antitrust
0 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 363 Personal Injury - Product Liability	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
0 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 364 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 820 Copyrights	
0 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers Liability	<input type="checkbox"/> 378 Other Fraud	<input type="checkbox"/> 830 Patent	
1 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 379 Truth in Lending	<input type="checkbox"/> 840 Trademark	
2 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 850 Securities/Commodities/ Exchange	
3 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage - Product Liability	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	
4 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability		<input type="checkbox"/> 881 Agricultural Acts	
5 Other Contract	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 882 Economic Stabilization on Act	
5 Contract Product Liability			<input type="checkbox"/> 883 Environmental Matters	
REAL PROPERTY	CIVIL RIGHTS	PARTITION PETITIONS	SOCIAL SECURITY	<input type="checkbox"/> 884 Energy Allocation Act
0 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS	<input type="checkbox"/> 885 Freedom of Information Act	
0 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 515 Death Penalty	<input type="checkbox"/> 890 Appeal of Fee Determination Under Equal Access to Justice Act	
0 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 892 Constitutionality of State Statutes	
0 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 893 Other Statutory Actions	
0 Tort Product Liability	<input type="checkbox"/> 444 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 535 Black Lung (823)	
0 All Other: Real Property			<input type="checkbox"/> 540 DOLCOMWW (405(g))	
			<input type="checkbox"/> 544 SSI Title XVI	
			<input type="checkbox"/> 545 PSL (405(g))	
CAUSE OF ACTION	CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY:			
	TITLE 28 §§2241-2254 (STATE REMEDIES)			
	PETITION FOR WRIT OF HABEAS CORPUS OF A STATE PRISONER WHO IS exhausted HELD IN FALSE IMPRISONMENT AND SUFFERING ILLNESS OF CANCER			

REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
 UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint
JURY DEMAND: YES NO1. RELATED CASE(S) (See instructions):
IF ANY

None

JUDGE

DOCKET NUMBER

SIGNATURE OF ATTORNEY OF RECORD

James W. Barton

Pro Se

OFFICE USE ONLY

DEPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

03-40271 4NMG

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTSFILED
IN CLERKS OFFICE

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) JAMES W. BARTON (PETITIONER) VS. COMM.R. DEPT. OF CORR. *et al.* 11/28/03

2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LIST ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)) U.S. DISTRICT COURT
DISTRICT OF MASS.

— I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT

— II. 195, 368, 400, 440, 441-444, 540, 550, 625, 710, 720, 730, 740, 790, 791, 820, 830, 840, 850, 890, 892-894, 895, 950.

— III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.

✓ IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.

— V. 150, 152, 153.

3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(E)) none

4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT? no

5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? no

IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY? (SEE 28 USC 2403) no

6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC 2284? no

7. DO ALL PARTIES IN THIS ACTION RESIDE IN THE CENTRAL SECTION OF THE DISTRICT OF MASSACHUSETTS (WORCESTER COUNTY)? (SEE LOCAL RULE 40.1(C)) YES ✓ OR IN THE WESTERN SECTION (BERKSHIRE, FRANKLIN, HAMDEN OR HAMPSHIRE COUNTIES)? (SEE LOCAL RULE 40.1(D)) YES no

8. DO ALL OF THE PARTIES RESIDING IN MASSACHUSETTS RESIDE IN THE CENTRAL AND/OR WESTERN SECTIONS OF THE DISTRICT? YES Worcester County

(a) IF YES, IN WHICH SECTION DOES THE PLAINTIFF RESIDE? Worcester-Gardner

9. IN WHICH SECTION DO THE ONLY PARTIES RESIDING IN MASSACHUSETTS RESIDE? Central

10. IF ANY OF THE PARTIES ARE THE UNITED STATES, COMMONWEALTH OF MASSACHUSETTS, OR ANY GOVERNMENTAL AGENCY OF THE U.S.A. OR THE COMMONWEALTH, DO ALL OTHER PARTIES RESIDE IN THE CENTRAL SECTION ✓ OR WESTERN SECTION _____

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME JAMES W. BARTONADDRESS NCCI P.O. BOX 466; GARDNER, MA 01440

TELEPHONE NO. _____

(COVER.SHT-08/90)